

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BRADLEY RUDKIN,

Plaintiff,

v.

ROGER BEASLEY IMPORTS, INC.

Defendant.

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Civil Action No. 1:17-CV-00849-LY

PLAINTIFF'S MOTION TO STAY PROCEEDINGS PENDING APPEAL

TO THE HONORABLE JUDGE:

COMES NOW the Plaintiff, Bradley Rudkin, ("Plaintiff"), and files this Motion to Stay Proceedings Pending Appeal, and will show:

BACKGROUND

1. This is an employment discrimination suit in which Plaintiff also asserts claims for invasion of privacy of breach of contract.
2. Defendant, Roger Beasley Imports, Inc. ("Defendant"), filed a Motion to Dismiss, for Fees and Sanctions Pursuant to the Texas Citizen's Participation Act (the "Motion to Dismiss") on October 12, 2017 (dkt. 8), as to Plaintiff's invasion of privacy claim.
3. On December 28, 2017, United States Magistrate Judge Andrew W. Austin recommended the Motion to Dismiss be denied (dkt. 18) and on January 31, 2018, this Court overruled Defendant's objections to the recommendations and denied Defendant's Motion to Dismiss (dkt. 20).

4. On February 26, 2018, Defendant appealed the Court's denial of its Motion to Dismiss, and filed its Notice of Appeal to the United States Court of Appeals for the Fifth Circuit (dkt. 21), which is now pending.¹

5. This case is set for trial in the month of February 2019. Defendant's appeal is not likely to be resolved by that time.

ARGUMENT

6. A motion to stay pending appeal should first be brought in the District Court. See Fed. R. App. P. 8(a)(1)(A).

7. "[T]he decision to grant a stay, like the decision to grant an evidentiary hearing, is 'generally left to the sound discretion of district courts.'" *Ryan v. Gonzales*, 568 U.S. 57, 74 (2013) (quoting *Schriro v. Landrigan*, 550 U.S. 465, 473 (2007)).

8. A trial court has broad discretion to stay proceedings to further judicial economy. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, counsel, and for litigants." *Id.* at 254.

9. In exercising such discretion, the Court should "'weigh competing interests and maintain an even balance' between the court's interest in judicial economy and any possible hardship to the parties." *Belize Soc. Dev. Ltd. v. Gov't of Belize*, 668 F.3d 724, 732-33 (D.C. Cir. 2012) (quoting *Landis*, 299 U.S. at 254-55).

10. A stay would promote judicial economy and conserve the resources of both parties in that, when this case is tried, all valid and surviving claims can be tried at once. The outcome of the appeal will substantially affect the evidence and matters presented at trial because of the unique nature of an invasion of privacy claim within the confines of an

¹ By filing this motion, Plaintiff does not concede the validity of Defendant's interlocutory appeal.

employment discrimination suit. Plaintiff has limited resources to conduct discovery, defend an appeal, and prepare for trial. A stay pending appeal would allow all parties the opportunity to reduce uncertainty about the matters to be tried, conserve resources, and further judicial economy.

REQUESTED RELIEF

11. Plaintiff moves and requests the Court enter an order staying further proceedings pending the ultimate results Defendant's appeal of its Motion to Dismiss in the United States Court of Appeals for the Fifth Circuit or – as the case may be – the Supreme Court of the United States.

MOTION OPPOSED

12. Counsel for Plaintiff has conferred with counsel for Defendant, and Defendant is opposed to the relief requested herein.

PRAYER

WHEREFORE, Plaintiff prays the Court grant this motion and stay further proceedings before this Court pending the ultimate resolution of Defendant's appeal of its motion to dismiss.

Respectfully submitted,

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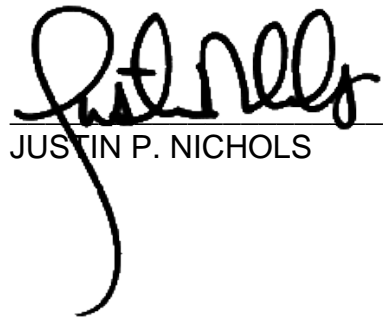
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing pleading was served via email and facsimile, to the following counsel of record on this 6th day of July 2018.

VIA ECF & FACSIMILE: (214) 748-4530

R. Lynn Fielder, Esq.



Justin P. Nichols